

this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) Loss of exemption. (i) On the earlier of the following dates, a unit exempt under paragraph (b) or (c) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the designated representative submits an Acid Rain permit application under paragraph (d)(2) of this section; or

(B) The date on which the designated representative is required under paragraph (d)(2) of this section to submit an Acid Rain permit application.

(ii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

[62 FR 55477, Oct. 24, 1997; 62 FR 66279, Dec. 18, 1997]

#### § 72.9 Standard requirements.

(a) *Permit Requirements.* (1) The designated representative of each affected

source and each affected unit at the source shall:

(i) Submit a complete Acid Rain permit application (including a compliance plan) under this part in accordance with the deadlines specified in § 72.30;

(ii) Submit in a timely manner a complete reduced utilization plan if required under § 72.43; and

(iii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit.

(2) The owners and operators of each affected source and each affected unit at the source shall:

(i) Operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the permitting authority; and

(ii) Have an Acid Rain Permit.

(b) *Monitoring Requirements.* (1) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in part 75 of this chapter.

(2) The emissions measurements recorded and reported in accordance with part 75 of this chapter shall be used to determine compliance by the unit with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.

(3) The requirements of part 75 of this chapter shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

(c) *Sulfur Dioxide Requirements.* (1) The owners and operators of each source and each affected unit at the source shall:

(i) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under § 73.34(c) of this chapter)

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not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(ii) Comply with the applicable Acid Rain emissions limitation for sulfur dioxide.

(2) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

(3) An affected unit shall be subject to the requirements under paragraph (c)(1) of this section as follows:

(i) Starting January 1, 1995, an affected unit under § 72.6(a)(1);

(ii) Starting on or after January 1, 1995 in accordance with §§ 72.41 and 72.43, an affected unit under § 72.6(a)(2) or (3) that is a substitution or compensating unit;

(iii) Starting January 1, 2000, an affected unit under § 72.6(a)(2) that is not a substitution or compensating unit; or

(iv) Starting on the later of January 1, 2000 or the deadline for monitor certification under part 75 of this chapter, an affected unit under § 72.6(a)(3) that is not a substitution or compensating unit.

(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.

(5) An allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1)(i) of this section, prior to the calendar year for which the allowance was allocated.

(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or an exemption under §§ 72.7 or 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

(d) *Nitrogen Oxides Requirements.* The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain

emissions limitation for nitrogen oxides.

(e) *Excess Emissions Requirements.* (1) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan, as required under part 77 of this chapter.

(2) The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(i) Pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by part 77 of this chapter; and

(ii) Comply with the terms of an approved offset plan, as required by part 77 of this chapter.

(f) *Recordkeeping and Reporting Requirements.* (1) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Administrator or permitting authority.

(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with § 72.24; *provided* that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(ii) All emissions monitoring information, in accordance with part 75 of this chapter; *provided* that to the extent that part 75 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program.

(iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under subpart I of this part and part 75 of this chapter.

(g) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or an exemption under § 72.7 or § 72.8, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to section 113(c) of the Act.

(2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement pursuant to section 113(c) of the Act and 18 U.S.C. 1001.

(3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(4) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.

(5) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

(6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under § 72.41 (substitution plans), § 72.42 (Phase I extension plans), § 72.43 (reduced utilization plans), § 72.44 (Phase II repowering extension plans), § 74.47 of this chapter (thermal energy plans), and § 76.11 of this chapter (NO<sub>x</sub> averaging plans), and except with regard to the requirements applicable to units with a common stack under part 75 of this chapter (including §§ 75.16, 75.17 and 75.18 of this chapter), the owners and operators and the designated representative of one affected unit shall not be liable for any

violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(7) Each violation of a provision of this part, parts 73, 74, 75, 76, 77, and 78 of this chapter, by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

(h) *Effect on Other Authorities.* No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or an exemption under § 72.7 or § 72.8 shall be construed as:

(1) Except as expressly provided in title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans.

(2) Limiting the number of allowances a unit can hold; *provided*, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act.

(3) Requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law.

(4) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act.

(5) Interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 62 FR 55478, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001]

#### § 72.10 Availability of information.

The availability to the public of information provided to, or otherwise obtained by, the Administrator under the